

JUDGE BERMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SOUTHERN FRUIT & VEGETABLE, INC,

Plaintiff,

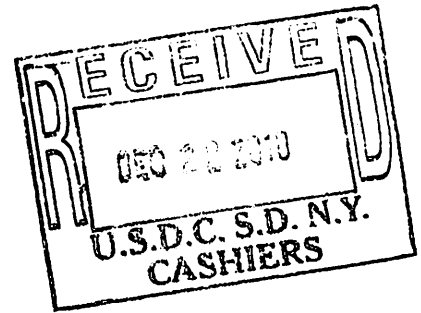
-against-

VEN-CO PRODUCE, INC, ROBERT VENUTI,
ANGELA VENUTI, GOTHAM BANK OF
NEW YORK, HUNTS POINT TERMINAL
PRODUCE CORPORATION
ASSOCIATION, INC, et al.,

Defendants.
-----X

10 CIV 9518

Index #



COMPLAINT

Southern Fruit & Vegetable, Inc, (the "Plaintiff"), by and through its undersigned attorneys,
Neiger LLP, hereby alleges upon information and belief as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of the above-captioned case pursuant to Sections 5(a), 5(b),
and 5(e)&(c)(5) of the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. § 499
("PACA") and pursuant to 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

THE PARTIES

3. The Plaintiff is a corporation organized and doing business under the laws of the State of
Tennessee, with its principal place of business located at 1172 Simms Heights Road, Kingston Springs,
Tennessee 37082-8106. The Plaintiff is a dealer and commission merchant holding license no. 19851522
issued and renewed by the United States Department of Agriculture under PACA.

4. At all relevant times, Ven-Co Produce, Inc (“Ven-Co”) has been a New York corporation operating a wholesale produce business, with its principal place of business located at the NYC Terminal Market, Bronx, New York, and is licensed under PACA as a dealer or commission merchant holding PACA license no. 19821683. Ven-Co owns shares in, and operates out of cooperative units (referred to herein as the “Co-ops”) located in the Hunts Point Terminal Market.

5. Robert Venuti and Angela Venuti (collectively, the “Venuti Defendants”) are New York State residents, and are officers, directors, and stockholders and persons “responsibly connected” with Ven-Co, as defined under PACA. The Venuti Defendants exercise primary control over Ven-Co’s daily business operations and assets.

6. Gotham Bank of New York (“Gotham”) is a bank which provides services in the State of New York and maintains a branch location at 1412 Broadway, New York, New York 10018.

7. Hunts Point Terminal Produce Corporation Association, Inc (the “Cooperative Corp.”) is a commercial cooperative corporation and maintains offices at 1 Hunts Point Terminal Market, Bronx, New York 10474-7302. The Co-ops are affiliated with the Cooperative Corp.

VERIFICATION

8. Attached hereto as Exhibit A is an Affidavit of Keith Sherrill, President of Southern Fruit & Vegetable, Inc, which was executed on December 20, 2010 verifying the facts set forth herein.

FIRST CAUSE OF ACTION (Breach of Contract – Ven-Co)

9. The Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if fully set forth herein.

10. Between April 30, 2009 and May 12, 2009, the Plaintiff sold and delivered to Ven-Co at least \$60,896.00 in fresh fruits, vegetables and perishable agricultural commodities (collectively, the

“PACA Commodities”) within the meaning of 7 U.S.C. § 499. These sales constituted numerous transactions of interstate commerce.

11. Ven-Co, by its servants, agents, and/or employees, accepted the PACA Commodities at the times they were delivered at Ven-Co’s place of business.

12. Following the respective deliveries, the Plaintiff sent invoices (the “Invoices”) to Ven-Co, which contained all material terms of the contracts of sales covering each shipment of the PACA Commodities, including:

The Perishable Agricultural Commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) Of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. § 499e). The seller of these Commodities retain a trust claim Over these commodities, all Inventories of food or other products derived from these commodities and Any receivables or proceeds from the Sale of these commodities until full payment is received.

13. The Venuti Defendants received and retained the Invoices, copies of which are attached hereto as Exhibit B.

14. Ven-Co has failed to pay for the PACA Commodities it received and accepted as identified on Exhibit B, is in breach of its contracts with the Plaintiff, and is in violation of 7 U.S.C. § 499e(4).

15. As a direct actual and proximate cause of Ven-Co’s failure to remit payment due to the Plaintiff on account of the PACA Commodities and violations of PACA, the Plaintiff has suffered losses and damages in the principal amount of \$60,896.00, plus interest.

16. Ven-Co is indebted and liable to the Plaintiff in the full amount of \$60,816.00, plus interest, costs, and reasonable attorneys’ fees.

SECOND CAUSE OF ACTION
(Enforcement of Statutory Trust Provisions of PACA - Venuti Defendants)

17. The Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if fully set forth herein.

18. At all relevant times, the Plaintiff was engaged in the business of selling and/or shipping perishable agricultural commodities as defined by PACA.

19. The PACA Commodities that are the subject of the First Cause of Action were purchased and sold in interstate commerce.

20. Pursuant to the regulations promulgated under PACA, the Plaintiff placed the following language in each Invoice sent to Ven-Co.:

The Perishable Agricultural Commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) Of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. § 499e). The seller of these Commodities retain a trust claim Over these commodities, all Inventories of food or other products derived from these commodities and Any receivables or proceeds from the Sale of these commodities until full payment is received.

21. The Invoices contained the required language to preserve the Plaintiff's rights as a licensed supplier in the PACA assets to create the statutory trust (the "PACA Statutory Trust").

22. Pursuant to 7 U.S.C. § 499e(c)(1)-(5), the Plaintiff performed and fulfilled all duties required to preserve its PACA Statutory Trust rights in the PACA Commodities in the amount of at least \$60,896.00 plus interest, costs, and reasonable attorneys' fees.

23. Pursuant to the PACA Statutory Trust, the Venuti Defendants are the statutory trustees of the PACA Statutory Trust and the PACA Commodities, all of which were delivered to and received by Ven-Co and the Venuti Defendants, and in which the Venuti Defendants had possession, custody and control.

24. The PACA Statutory Trust required the Venuti Defendants to hold and preserve *all goods, inventories, proceeds and receivables* in trust for the benefit of the Plaintiff until full payment has been made to the Plaintiff on account of the PACA Commodities.

25. Upon information and belief, the Venuti Defendants failed to maintain the PACA Commodities and keep them available to satisfy Ven-Co's and the Venuti Defendants' obligations to the Plaintiff under the PACA Statutory Trust.

26. Ven-Co and the Venuti Defendants' failure to pay the Plaintiff for the PACA Commodities in full, as well as their failure to hold and maintain the PACA Commodities and proceeds therefrom, constitute a violation of section 499b(4) of PACA and the regulations enforcing the PACA Statutory Trust provisions, 7 C.F.R. § 46.46.

27. The Venuti Defendants have breached their fiduciary duties to maintain the PACA Statutory Trust and PACA Commodities under their control in violation of section 499b of PACA and the regulations enforcing the PACA Statutory Trust provisions set forth in 7 C.F.R. § 46.46.

28. In addition, upon information and belief, at all relevant times, the Venuti Defendants dissipated portions of the PACA Commodities in their custody and/or have converted portions of the PACA Commodities to their own use.

29. As a direct and proximate cause of the wrongful acts and omissions of the Venuti Defendants, the Plaintiff has been damaged in the amount of \$60,896.00 plus interest, costs, and reasonable attorneys' fees incurred in this action.

THIRD CAUSE OF ACTION
(Enforcement of Statutory Trust Provisions of PACA - Gotham)

30. The Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if fully set forth herein.

31. Upon information and belief, around the year 2000, the Venuti Defendants obtained the financing for the purchase of the shares of stock in the Co-ops from Gotham in excess of \$1 million (the “Co-ops Loan”).

32. Upon information and belief, the Venuti Defendants stored and maintained the PACA Commodities in the Co-ops.

33. Upon information and belief, Gotham has received and accepted mortgage and interest payments (the “Mortgage Payments”) from Ven-Co, by and through the actions of the Venuti Defendants pursuant to the Co-ops Loan agreement and related loan documents.

34. Upon information and belief, funds making up the Mortgage Payments are direct and traceable proceeds from Ven-Co’s sales of the PACA Commodities.

35. As proceeds of the PACA Commodities, the funds paid by Ven-Co to Gotham as Mortgage Payments should have been paid by Ven-Co, through its agents, pursuant to the PACA Statutory Trust. *See* 7 U.S.C. § 499e(c)(2); H.R. Rep. No. 98-98-543, at 2 (1983).¹

36. Accordingly, upon information and belief, the Mortgage Payments were made from funds that were property of the PACA Statutory Trust, and should have inured to the Plaintiff’s benefit.²

37. Gotham’s retention of the Mortgage Payments constitutes a violation of 7 U.S.C. § 499e(c)(2) and Regulations.

¹ The PACA trust is a “nonsegregated floating trust” that applies to the perishable “commodities, products derived therefrom, and any receivables or proceeds from their sale in the hands of the commission merchant, dealer, o[r] broker.”); *In re Kornblum*, 81 F.3d 280, 285 (2d Cir. 1996) (“the *res* of a PACA trust includes all of the [beneficiary’s] Produce-related assets regardless of their origin . . . assets acquired with the cash proceeds of trust property . . . are included among the ‘proceeds’ of that property . . . whether [such] asset [was] purchased with the cash proceeds of a trust property as a second generation ‘proceed’ or as the product of a wrongful dissipation of trust assets”).

² *In re Kornblum*, 81 F.3d at 285. (“where [PACA] trustee by the wrongful disposition of trust property acquires other property, the beneficiary is entitled to enforce a constructive trust of property so acquired”).

FOURTH CAUSE OF ACTION
(Enforcement of Statutory Trust Provisions of PACA – Cooperative Corp.)

38. The Plaintiff repeats and realleges the allegations contained in all prior paragraphs as if fully set forth herein.

39. The PACA Statutory Trust requires the Venuti Defendants, as trustees, to hold and preserve *all goods, inventories, proceeds and receivables* for the benefit of the Plaintiff until full payment has been made to the Plaintiff (and any other PACA-qualified produce vendors with perfected PACA claims).

40. Upon information and belief, substantial portions of the PACA Commodities are presently being held and maintained at the Co-ops.

41. Upon information and belief, Ven-Co, but and through the Venuti Defendants, entered into a transaction for the sale of the Co-ops for approximately \$1.4 million (the “Co-ops Sale Transaction”).

42. Upon information and belief, the Cooperative Corp. has or will imminently approve the Co-ops Sale Transaction.

43. Upon information and belief, Ven-Co and the Venuti Defendants will not be able to hold and maintain the remaining PACA Commodities for the benefit of the Plaintiff if the Co-ops Sale Transaction is consummated.

44. Accordingly, consummation of the Co-ops Sale Transaction, at this time, would cause immediate dissipation of the PACA Commodities, and therefore, poses an imminent danger of irreparable harm to the Plaintiff.

WHEREFORE, the Plaintiff respectfully seeks judgment as follows:

1. Judgment against Ven-Co for breach of contract in the amount of \$60,896.00 plus interest, costs and reasonable attorneys' fees;
2. Declaring Ven-Co and the Venuti Defendants to have violated PACA and the USDA regulations promulgated thereunder;
3. Declaring the Venuti Defendants to be the statutory and constructive trustees, for the benefit of the Plaintiff, with respect to the PACA Commodities, related assets and proceeds to which the Plaintiff has preserved its rights under PACA;
4. Declaring the Venuti Defendants to be in defalcation with respect to their fiduciary duties to the Plaintiff, and to be personally, jointly, and severally liable to the Plaintiff for all losses, costs, fees, and expenses sustained by the Plaintiff as the result of the acts or omissions alleged herein;
5. Ordering the Venuti Defendants to pay the Plaintiff the sum of \$60,896.00, plus applicable interest and costs, and granting the Plaintiff a judgment for said amount;
6. Declaring the Mortgage Payments received by Gotham to be proceeds of the PACA Commodities and property of the PACA Statutory Trust, which Ven-Co and the Venuti Defendants should have preserved for the benefit of the Plaintiff;
7. Ordering Gotham to disgorge the Mortgage Payments to the Plaintiff;
8. Declaring that the Co-ops Sale Transaction constitutes a violation by the Venuti Defendants, as trustees of the PACA Statutory Trust, of their fiduciary duties to maintain and preserve the PACA Statutory Trust property for the benefit of the Plaintiff;
9. Entering an Order preliminarily restraining and enjoining Ven-Co, the Venuti Defendants, Gotham, and the Cooperative Corp. from facilitating and/or transferring the Co-ops pursuant to the Cooperative Sale Transaction; and
10. Granting the Plaintiff such other and further relief as the Court deems just and proper.

Dated: December 21, 2010
New York, NY

By: 

Edward E. Neiger, Esq.
NEIGER LLP
317 Madison Avenue
21st floor
New York, New York 10017
Tel: 212.267.7342
Fax: 212.918.3427

EXHIBIT “A”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SOUTHERN FRUIT & VEGETABLE, INC,

Index #

Plaintiff,

-against-

VEN-CO PRODUCE, INC, ROBERT VENUTI,
ANGELA VENUTI, GOTHAM BANK OF
NEW YORK, HUNTS POINT TERMINAL
PRODUCE CORPORATION
ASSOCIATION, INC, et al.,

Defendants.
-----X

**AFFIDAVIT OF KEITH SHERRILL IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR A PRELIMINARY INJUNCTION**

I, Keith Sherrill, being duly sworn, depose and say:

1. I am the President of Southern Fruit & Vegetable, Inc.¹ and make this Affidavit in support of the Plaintiff's Application for emergency relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. I am an adult, who, if called upon as a witness, would and could competently testify as to all facts stated herein. Unless provided otherwise, I have personal knowledge of all facts described herein.

3. The Plaintiff is a supplier of wholesale quantities of perishable agricultural commodities in interstate commerce and is a produce-dealer subject to and licensed under the Perishable Agricultural Commodities Act of 1930, as amended, 7 U.S.C. § 499a *et seq.* ("PACA"). The Plaintiff holds PACA license no. 19851522 issued and renewed by

¹ Capitalized terms which are not defined herein shall have the meanings ascribed to them in the Application.

the United States Department of Agriculture, a copy of which is attached hereto as Exhibit "A".

4. My responsibilities as President of the Plaintiff include supervising the collection of the accounts receivable for all sales of produce, including the account of Ven-Co Produce Inc, ("Ven-Co") and the PACA Commodities which are the subject of this litigation. I have custody and control of the Plaintiff's sales and accounts receivable records as they relate to Ven-Co, and I am familiar with the manner in which these records were compiled.

5. Ven-Co has a principal place of business located at NYC Terminal Market, Bronx, New York and was at all times pertinent herein a purchaser of wholesale quantities of produce. Robert Venuti and Angela Venuti (the "Venuti Defendants") are responsible for the day-to-day operations of Ven-Co during the time in question and were in a position of control over the PACA Commodities.

6. The sales and accounts receivable records of the Plaintiff, including invoices and account statements related to Ven-Co, were made in the ordinary course of business. These business records were made by me or by employees under my direction and supervision whose duty it is to prepare such documents.

7. Between April 30, 2009 and May 12, 2009, the Plaintiff sold to Ven-Co the PACA Commodities, which traveled through interstate commerce, in the amount of at least \$60,896.00, all of which remains unpaid. A true and correct copy of an Accounts Receivable Aging Report is attached hereto as Exhibit "B".

8. Ven-Co accepted the PACA Commodities from the Plaintiff.

9. The Plaintiff timely delivered invoices (collectively, the "Invoices") to Ven-Co, which contained the following language:

The Perishable Agricultural Commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) Of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. § 499e). The seller of these Commodities retain a trust claim Over these commodities, all Inventories of food or other products derived from these commodities and Any receivables or proceeds from the Sale of these commodities until full payment is received.

True and correct copies of the Invoices are attached hereto as Exhibit "C."

10. The Venuti Defendants have never disputed to the Plaintiff that the amount of \$60,869.00 is due and owed by Ven-Co.

11. I made repeated demands upon Ven-Co and the Venuti Defendants for such payment and received numerous promises of payment. However, the payments were not made.

12. The Venuti Defendants issued checks for payment of the PACA Commodities, however, each was returned for insufficient funds.

13. Upon information and belief, Ven-Co, by and through the Venuti Defendants, are in the process of consummating a sale transaction of the cooperative units which it operates, subject to the approval of the Hunts Point Cooperative Corporation, to Gotham Bank which provided financing to Ven-Co to purchase the cooperative units.

I declare under penalty of perjury that the foregoing statements contained herein are true and correct to the best of my knowledge. I am aware that I am subject to perjury should any of the foregoing statements made by me be willfully false.

Dated: December 20, 2010

Sworn to me this 20
day of December 2010,

Shawn Rider
Notary Public
exp 9/19/2011

Southern Fruit & Vegetable, Inc.

By: Keith Sherrill
Keith Sherrill, President

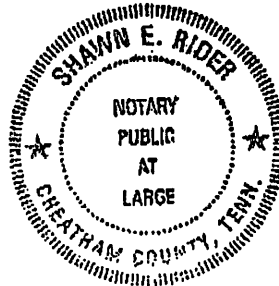




EXHIBIT "A"
TO KEITH SHERRILL AFFIDAVIT

Fruit and Vegetable Programs

Search PACA

Search Again  *Go Back to the previous page* 

<u>License No.</u>	<u>Date Issued</u>	<u>Anniversary Date</u>	<u>Status</u>
19851522	7/9/1985	7/9/2011	Active
<u>Business Name</u>	<u>City</u>	<u>State</u>	
SOUTHERN FRUIT & VEGETABLE INC	KINGSTON SPGS	TN	
<u>Reported Principal (Last Name, First Name)</u>			
SHERRILL, DARLENE			
SHERRILL, KEITH			
<u>Trade Names</u>			
None			
<u>Branch Name , Branch City , Branch State</u> None			

Return to: [Perishable Agricultural Commodities Act \(PACA\)](#)

EXHIBIT "B"
TO KEITH SHERRILL AFFIDAVIT

Date: 8/31/10
Time: 10:16AM

SOUTHERN FRUIT & VEGETABLE, INC
Accounts Receivable Aged Open Item Detail Report
Aging Date: 8/31/10

Page: 1

Customer: VEN-CO

Customer Code Order

Invoice	Date	Type	Reference	Rep	Trans Amount	Current Amount	15 - 21 Amount	22 - 28 Amount	Over 28 Amount
VEN-CO	VEN-CO PRODUCE, INC								
4154-1	4/30/09	Invoice		TES	7,680.00			488 days -	7,680.00
4157-1	4/24/09	Invoice		TES	9,150.00			494 -	9,150.00
4161-1	4/27/09	Invoice		TES	8,940.00			491 -	8,940.00
4172-1	5/05/09	Invoice		TES	8,100.00			483 -	8,100.00
4173-1	5/07/09	Invoice		TES	8,310.00			481 -	8,310.00
4182-1	5/11/09	Invoice		TES	9,812.00			477 -	9,812.00
4183-1	5/12/09	Invoice		TES	8,904.00			476 -	8,904.00
CUSTOMER TOTAL:					60,896.00				60,896.00
REPORT TOTALS:					60,896.00				60,896.00

S F + V + S - 615-646-0282
Keith Sherrill

EXHIBIT "C"
TO KEITH SHERRILL AFFIDAVIT

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4154-1**Date** 4/30/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produ	TES		Truck-Delivered	4/27/2009	Net 10

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	Pallets	6.00	120.00
840	YELLOW ONIONS	Jumbo USA	9.00	7,560.00

* * *We Appreciate Your Business* * *

Total 7,680.00

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 495a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4157-1**Date** 4/24/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produc	TES		Truck-Delivered	4/21/2009	Net On Receipt

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	Pallets	6.00	120.00
420	YELLOW ONIONS	Jumbo USA	9.50	3,990.00
420		Large/Med USA	12.00	5,040.00

* * *We Appreciate Your Business* * *

Total 9,150.00

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4161-1**Date** 4/27/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produ	TES		Truck-Delivered	4/24/2009	Net 10

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	Pallets	6.00	120.00
588	YELLOW ONIONS	Jumbo USA	9.75	5,733.00
252		Large/Med USA	12.25	3,087.00

* * We Appreciate Your Business * *

Total 8,940.00

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 495a(c)). The seller of these commodities retains a legal claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4172-1**Date** 5/5/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produc	TES		Truck-Delivered	4/30/2009	Net On Receipt

<i>Quantity</i>	<i>Type</i>	<i>Price</i>	<i>Total</i>
20	MIXED ITEMS Pallets	6.00	120.00
840	YELLOW ONIONS Jumbo USA	9.50	7,980.00

***** We Appreciate Your Business *****

<i>Total</i>	<i>8,100.00</i>
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PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 6 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 459(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4173-1**Date** 5/7/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produc	TES		Truck-Delivered	5/4/2009	Net On Receipt

<i>Quantity</i>	<i>Type</i>	<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	6.00	120.00
840	YELLOW ONIONS	9.75	8,190.00

** We Appreciate Your Business **	Total	8,310.00
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PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipped is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.P.O. Box 262 Kingston Springs, TN 37082
Tel: (615) 646-0282 Fax: (615) 646-8425**Invoice****Invoice #** 4183-1**Date** 5/12/2009**Sold To:**Ven-Co Produce, Inc.
374-376 Row C New York City termin
Bronx NY 10474-**Ship To:**

Same

Acct	Sales Rep	Purchase Order #	Ship Via	Date Shipped	Terms
Ven-Co Produ	TES		Truck-Delivered	5/8/2009	Net 10

Quantity	Type	Price	Total
21	MIXED ITEMS Pallets	6.00	126.00
798	YELLOW ONIONS Jumbo USA	11.00	8,778.00

***** We Appreciate Your Business *****

Total	8,904.00
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PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(a)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4182-1**Date** 5/11/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produ	TES		Truck-Delivered	5/7/2009	Net 10

<i>Quantity</i>	<i>Type</i>	<i>Price</i>	<i>Total</i>
22	MIXED ITEMS	6.00	132.00
880	YELLOW ONIONS	11.00	9,680.00

** We Appreciate Your Business **

<i>Total</i>	<u>9,812.00</u>
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PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 495e(c)). The seller of these commodities retains a trust claim over those commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trade number under government inspection is required by shipper.

EXHIBIT “B”

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4154-1**Date** 4/30/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produ	TES		Truck-Delivered	4/27/2009	Net 10

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	Pallets	6.00	120.00
840	YELLOW ONIONS	Jumbo USA	9.00	7,560.00

**** We Appreciate Your Business ****

Total	7,680.00
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PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 495a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4157-1**Date** 4/24/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produc	TES		Truck-Delivered	4/21/2009	Net On Receipt

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	Pallets	6.00	120.00
420	YELLOW ONIONS	Jumbo USA	9.50	3,990.00
420		Large/Med USA	12.00	5,040.00

**** We Appreciate Your Business ****

Total	9,150.00
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PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 6 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 489c(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4161-1**Date** 4/27/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produ	TES		Truck-Delivered	4/24/2009	Net 10

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	Pallets	6.00	120.00
588	YELLOW ONIONS	Jumbo USA	9.75	5,733.00
252		Large/Med USA	12.25	3,087.00

** We Appreciate Your Business **

Total 8,940.00

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

---There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper ---

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4172-1**Date** 5/5/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produc	TES		Truck-Delivered	4/30/2009	Net On Receipt

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	Pallets	6.00	120.00
840	YELLOW ONIONS	Jumbo USA	9.50	7,980.00

***** We Appreciate Your Business *****

Total **8,100.00**

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 6 (a) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 459a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4173-1**Date** 5/7/2009**Sold To:**

Ven-Co Produce, Inc.
374-376 Row C New York City termin
Bronx NY 10474-

Ship To:

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produc	TES		Truck-Delivered	5/4/2009	Net On Receipt

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
20	MIXED ITEMS	Pallets	6.00	120.00
840	YELLOW ONIONS	Large/Med USA	9.75	8,190.00

***** We Appreciate Your Business *****

Total **8,310.00**

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipped is notified within 8 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082
 Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4183-1**Date** 5/12/2009**Sold To:**

Ven-Co Produce, Inc.
 374-376 Row C New York City termin
 Bronx NY 10474-

Ship To:

Same

Acct	Sales Rep	Purchase Order #	Ship Via	Date Shipped	Terms
Ven-Co Produ	TES		Truck-Delivered	5/8/2009	Net 10

Quantity	Type	Price	Total
21	MIXED ITEMS	6.00	126.00
798	YELLOW ONIONS	11.00	8,778.00

* * We Appreciate Your Business * *

Total
8,904.00

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 49 USC (7 U.S.C. 409e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 4 hours. A trouble number and/or government inspection is required by shipper.

Southern Fruit and Vegetable, Inc.

P.O. Box 262 Kingston Springs, TN 37082

Tel: (615) 646-0282 Fax: (615) 646-8425

Invoice**Invoice #** 4182-1**Date** 5/11/2009**Sold To:**Ven-Co Produce, Inc.
374-376 Row C New York City termin
Bronx NY 10474-**Ship To:**

Same

<i>Acct</i>	<i>Sales Rep</i>	<i>Purchase Order #</i>	<i>Ship Via</i>	<i>Date Shipped</i>	<i>Terms</i>
Ven-Co Produ	TES		Truck-Delivered	5/7/2009	Net 10

<i>Quantity</i>	<i>Type</i>		<i>Price</i>	<i>Total</i>
22	MIXED ITEMS	Pallets	6.00	132.00
880	YELLOW ONIONS	Large/Med USA	11.00	9,680.00

***** We Appreciate Your Business ********Total*** 9,812.00

PACA TRUST PROVISION: The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499c(c)). The seller of these commodities retains a trust claim over those commodities, all inventories of food and other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

There will be no claims or adjustments of any kind made in price or amount unless shipper is notified within 6 hours. A traceable number and/or government inspection is required by shipper.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOUTHERN FRUIT & VEGETABLE, INC,

Index #

Plaintiff,

-against-

VEN-CO PRODUCE, INC, ROBERT VENUTI,
ANGELA VENUTI, GOTHAM BANK OF
NEW YORK, HUNTS POINT TERMINAL
PRODUCE CORPORATION
ASSOCIATION, INC, et al.,


Defendants.

COMPLAINT

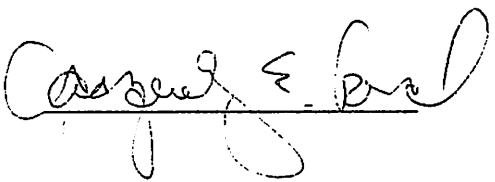
Neiger LLP
Edward E. Neiger, Esq.
317 Madison Avenue, 21st floor
New York, New York 10017
TELEPHONE: (212) 267-7342

Pursuant to 22 NYCRR 130.1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: December 21, 2010

Signature: 

Print Signer's Name: EDWARD E. NEIGER, ESQ.


JACQUELYN E. FORD
Notary Public, State of New York
No. 01FO4851616
Qualified in Orange County
Commission Expires February 3, 2014